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State of California

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The Honorable James R. Mills, President Pro Tempore
and Senator for the Fortieth District, has requested an opinion
on the following question:

Are California state certified appraisers considered
professional employees under Government Code section 3507.3?

The conclusion is:

California state certified appraisers should not be
considered professional employees under Government Code section
3507.3.

ANALYSIS

In 1968 the Legislature enacted a framework for labor relations between public employers and their employees known as the Meyers-Millias-Brown Act¹, Government Code sections 3500-3511, hereinafter referred to as the act. Government Code section 3500 sets forth the purpose and intent of the act and provides in pertinent part as follows:

"It is the purpose of this chapter to promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations. It is also the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the various public agencies in the State of California by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice and be represented by such organizations in their employment relationships with public agencies."

Government Code section 3507.3, hereinafter section 3507.3, relating to representation of professional public employees, provides as follows:

"Professional employees shall not be denied the right to be represented separately from nonprofessional employees by a professional employee organization consisting of such professional employees. In the event of a dispute on the appropriateness of a unit of representation for professional employees upon request of any of the parties, the dispute shall be submitted to the Division of Conciliation of the Department of Industrial Relations for mediation or for recommendation for resolving the dispute."

1. Stat. 1968, ch. 1390, §§ 1-12.5, at 2725-29. Government Code sections 3500-3511 were originally known as the Brown Act (Stats. 1961, ch. 1964). The Brown Act became, in 1968, the Meyers-Millias-Brown Act (Government Code § 3510.)

"'Professional employees,' for the purpose of this section, means employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including, but not limited to, attorneys, physicians, registered nurses, engineers, architects, teachers, and the various types of physical, chemical and biological scientists."

Statutory interpretation of the second paragraph of section 3507.3 is required to resolve the question under analysis herein.

As this opinion analyzes the question of whether California state certified appraisers are "professional employees" under section 3507.3, it must be preliminarily pointed out that pursuant to Revenue and Taxation Code section 670 subdivision (a) every state, county, city, or city and county appraiser for property tax purposes must hold a valid appraiser's certificate.^{2/} State certification is obtained through the examination process.^{3/} Retention of a valid appraiser's certificate requires exposure to yearly training^{4/} conducted or approved by the State Board of Equalization.^{5/}

Section 3507.3, as Professor Grodin has acknowledged, J. Grodin, Public Employee Bargaining in California: The Meyers-Milius-Brown Act in the Courts (1972) 23 Hastings Law Journal, 719,

2. Revenue and Taxation Code section 670 subdivision (a) provides:

"No person shall perform the duties or exercise the authority of an appraiser for property tax purposes as an employee of the state, any county or city and county, or city, either general law or chartered, unless he is the holder of a valid appraiser's certificate issued by the State Board of Equalization." See also Title 18, California Administrative Code § 281.

3. Revenue and Taxation Code § 670 subdivision (b) through (d). See also Title 18, California Administrative Code §§ 282-283.

4. Whether this training qualifies an appraiser as a "professional employee" will be discussed below.

5. Rev. and Tax. Code § 671.

739, seeks to define the term "professional employees" in the general language of "employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction." Section 3507.3 then illustrates the definition by examples of "attorneys, physicians, registered nurses, engineers, architects, teachers, and the various types of physical, chemical and biological scientists."6/

At this juncture it should be pointed out that research has disclosed no reported California appellate court cases either interpreting the definition of section 3507.3 or determining whether a specific group of employees qualifies under the definition. However, the California Court of Appeal has acknowledged that the language of and the cases decided under the National Labor Relations Act^{7/} are helpful in construing similar language in the Meyers-Millias-Brown Act. Alameda County Assistant Public Defenders Assn. v. County of Alameda, 33 Cal. App. 3d 825, 829-31 (1973). The National Labor Relations Act provides a functional definition of "professional employee"8/

"(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

6. The Legislature, by tying its definition of "professional employees" to specific examples apparently has invited reference to those qualities which characterize the given occupational examples for the purpose of interpreting the general language of the definition.

7. Title 29, U.S. Code, §§ 151 et seq., enacted June 23, 1947.

8. Title 29, U.S. Code, § 152 (12).

"(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a)."

Insofar as the qualities and standards characterizing the occupational examples in section 3507.3 are articulated in and form the basis for the National Labor Relations Act's definition, the latter functional definition is helpful in the construction of section 3507.3.

The Legislature appears to have intended section 3507.3 to apply to a limited category of employees who have obtained the specialized knowledge and skills which are required by their work in an institution of higher learning or a hospital. This is indicated by the occupational examples in section 3507.3 and is consistent with paragraph (a) clause (iv) of the National Labor Relations Act's definition of "professional employees," set out above. The general language that "knowledge and skills" of a professional be attained "through completion of a recognized course of instruction" (emphasis added) further indicates this is the legislative intent. The "completion of a recognized course of instruction" clause implies exclusion of those employees who acquire the basic specialized knowledge and skills through on the job training in favor of those who bring the knowledge and skills to the job through education in a college, hospital, or equivalent institution.

Section 3507.3 stipulates that a professional employee's knowledge and skills be "specialized," indicating a legislative presumption that the work involve judgment, discretion, and intellectual approach; such presumption being confirmed by the occupational examples of section 3507.3 and consistent with the qualities enumerated in paragraph (a) clause (i) and (ii) of the National Labor Relations Act's definition of "professional employees," supra.

Before applying the definition of section 3507.3 to state certified appraisers, it is incumbent to note that the narrower construction of section 3507.3 outlined above, will discourage fragmentation of public employees into multitudinous "professional" organizations which will in turn foster uniform representation, one of the basic purposes of the act.^{9/}

9. See § 3500 of the act.

The certification process of state appraisers under Revenue and Taxation Code sections 670-673 does not in and of itself vest the appraiser with the status of a "professional employee" within the meaning of section 3507.3. There are no pre-certification education requirements.^{10/} Rather, the only qualification for certification under Revenue and Taxation Code section 670 is passage of an examination. The only educational requirements concern retention of certification. Revenue and Taxation Code section 671 requires annual post-certification training consisting of at least 24 hours of training approved by the State Board of Equalization.

Revenue and Taxation Code sections 671-673 do not, either expressly or impliedly, require "specialized knowledge and skills attained through completion of a recognized course of instruction" for either certification or retention of certification.

Moreover, we are advised that it is not the custom of state, county, or city employers to require of their certified appraisers "specialized knowledge and skills attained through completion of a recognized course of study" within the meaning of section 3507.3. The knowledge and skills of such an appraiser are not acquired "through completion of a recognized course of instruction," as stipulated by section 3507.3, but rather through education and training programs while employed as an appraiser or an appraiser-trainee or aide. The maximum training and experience requirements imposed by a public employer are graduation from an accredited college in addition to appraisal experience.^{11/} Some public

10. For a person to exercise the duties of an auditor, or auditor appraiser under Revenue and Taxation Code section 671 subdivision (f) a "degree with a specialization in accounting from a recognized institution of higher education" is an optional alternative to passage of a civil service or merit systems examination for the position of accountant.

11. County of Los Angeles requirements as specified in class specification for the position of appraiser, approved by the Civil Service Commission as item No. 1964 on April 15, 1970, revised May 31, 1972.

employers make a college education optional.^{12/} We are also advised that the accredited institutions of higher education in the state do not offer a curriculum or prolonged course of study in the field of appraisal. Indeed, this is reflected by the fact that the training and experience requirements of the public employers make no reference to the existence of such a curriculum or prolonged course of study, nor even to a college or university specialization in appraisal. Upon juxtaposition of the knowledge, skills, and educational requirements of appraisers certified for appraisal for tax assessment purposes within the definition of "professional employees" contained in section 3507.3, it is our conclusion that such appraisers should not be considered "professional employees" within the meaning of that statute.

We are advised^{13/} that the duties of an appraiser certified for tax assessment purposes can generally be characterized as the gathering, preparation, and analyzing of data related to the value of land and improvements, inspection of land and improvements, interviewing of taxpayers and other interested persons in the appraisal process, and the determination of fair market land and improvement value through the use of standardized approaches to value. It cannot be denied that there is a substantial fact-gathering process which attends the acquisition of market data and the inspection of property for the determination of land and improvement characteristics. However, it appears that the actual process of determining land and improvement value is a function of the application of standardized approaches to value rather than the result of consistent discretion and judgment and a concern for the desirability of the approaches themselves.

In reaching this conclusion, we are mindful of the limited amount of decisional law interpreting the definition of section 3507.3. However, the few cases on this point have clearly called for a narrow construction of section 3507.3. E.g., California Licensed Vocational Nurses,

12. For example, see San Francisco Civil Service Commission qualifications for the title of real property appraisers, designated as Code 4251, adopted June 23, 1966, and amended September 13, 1971, and Sacramento County Civil Service Commission class Code 1298 adopted September 1, 1955, and revised May 24, 1973.

13. See materials referred to in footnotes 11 and 12.

Inc. v. Sequoia Hosp. Dist., No. 141277 (San Mateo Super. Ct., filed June 4, 1971); Licensed Vocational Nurses League of California, Inc. v. County of Sacramento, No. 207379 (Sacramento Super. Ct., filed November 25, 1970). These cases unsuccessfully attempted to obtain judicial interpretation of licensed vocational nurses as "professionals." Not surprisingly, the few cases decided under the National Labor Relations Act's definition of "professional employee" have also called for a narrow construction. In Westinghouse Electric Corporation v. N.L.R.B., 440 F. 2d 7 (C.A.N.Y., 1971), certiorari denied 404 U.S. 853, the question was whether computer analysts, whose primary responsibility it was to formulate procedures which would result in the satisfactory transfer of work to a new mechanized system, were "professional employees." The Court of Appeal in denying the analysts the status of "professional employees," observed that such an analyst is concerned with the "methods of mechanization rather than the desirability of the process" and that "the kind of knowledge of an advanced type that is normally acquired as a result of prolonged study in an institution of higher learning" is not required (at p. 10). Accord, Westinghouse Electric Corporation v. N.L.R.B., 424 F. 2d 1151 (C.A.Ill., 1970), certiorari denied 400 U.S. 831. See also, Factory Mutual Engineering Corporation, 166 N.L.R.B. 224 (1967), an opinion by the National Labor Relations Board holding that fire inspectors and adjusters employed by insurance companies are not professional employees, since the employer has no specific advanced-degree requirement for them and the work involves physical inspection of premises and equipment and valuation of data in accordance with established procedures.

It should also be noted that any reasonable implications to be drawn from the case of Alameda County Assistant Public Defenders Assn. v. County of Alameda, 55 Cal. App. 5d 825, (1973) are consistent with the conclusions expressed in this opinion. That case dealt with another issue under section 3507, distinct from the issue being analyzed herein, to wit, whether professional employees have the right to separate representation in a unit limited to their own profession, or whether they may be compelled to join in a unit with other professional groups.^{14/} In County of Alameda, the county had

14. See J. Grodin, Public Employee Bargaining in California The Meyers-Millias-Brown Act in the Courts (1972) 23 Hastings Law Journal, 719, 739, supra.

lumped together in one professional employee group members of different occupations, to wit, librarians, rodent and weed inspectors, planners, systems and procedures analysts, and other. The Court of Appeal, for purposes of its opinion, did not challenge the county's designations of professional employees, but rather dealt directly with the subject of separate representation for separate professional groups. To the extent any language in County of Alameda may be suggestive of an interpretation of "professional employee" under Section 3507.3, that interpretation would confirm the conclusion expressed herein.

At page 832 of the opinion, the Court observes:

"It does seem incongruous that assistant public defenders should be grouped in a bargaining unit with auditors, planners, rodent and weed inspectors."

Thereafter, the holding of the case is expressed:

"Denying recognition to appellant violates section 3507 of the Government Code in that thereby professional employees with common interests and having an organization of their own choice, are unreasonably forced into an organization with other employees with whom there exists little, if any, community of interest." (Emphasis added.)

The court appears to be concerned about the suggestion that some of the "other employees" are "professional employees." Such a concern would imply a narrower interpretation of "professional employee" under section 3507.3 than that illustrated by the Alameda County representation unit under scrutiny therein.

In reaching the conclusion that appraisers certified by the state for tax assessment purposes are not "professional employees" within the meaning of section 3507.3 of the Government Code, we recognize that as the educational, scientific, and technological patterns of our society become even more sophisticated occupational patterns and requirements will undoubtedly compel continuing scrutiny of the statutory framework for public employer-employee relationship and the enunciation of fixed concepts such as professionalism through definitions. This process of scrutinization is under way

presently 15/ and should be encouraged.

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15. The Assembly of the State of California in House Resolution 51, adopted June 22, 1972, appointed an Assembly Advisory Council on Public Employee Relations for the purpose of submitting a report and recommendations applicable to public employee relations at all levels of government. In the Final Report of that Council dated March 15, 1973, there was included the text of a proposed new comprehensive statutory scheme. The proposed new definition of "Professional Employee" is found at page 6, Appendix A (Collective Bargaining Act for Public Employment) of the Final Report and has been incorporated into pending legislation (Assembly Bill No. 1243, April 12, 1973, Amended in Assembly Aug. 13, 1973, Amended in Senate Sept. 5, 1973, California Legislature--1973-74 Regular Session):

Section 3501, subdivision (t) of the Government Code would provide:

"'Professional employee' means an employee engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction in an institution of higher learning or its equivalent."